



NATIONAL CENTER FOR LESBIAN RIGHTS

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March 10, 2015

Honorable Mark Leno  
State Capitol, Room 5100  
Sacramento, CA 95814  
Fax: (916) 651-4911

Re: SB 178 (Leno) – **SUPPORT**

Dear Senator Leno:

The National Center for Lesbian Rights (NCLR) is pleased to support your Senate Bill 178, which would safeguard Californians' electronic information and support innovation and the digital economy by updating California privacy law to match the modern digital world. NCLR is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender (LGBT) people and their families through litigation, public policy advocacy, and public education.

Californians use technology every day to connect, communicate, work and learn. Furthermore, the state's leading technology companies rely on consumer confidence in these services to help power the California economy. Given a fraught history of governmental surveillance and stigmatization in social and professional life, many LGBT people require and prefer that their private communications remain between themselves and their intended recipients. SB 178 takes important steps toward ensuring that communication sent on new technological devices is not readily available to government officials and other institutions without a pressing need.

While technology has advanced exponentially, California privacy law is still in the digital dark ages. Law enforcement is increasingly taking advantage of outdated privacy laws to turn mobile phones into tracking devices and access sensitive emails, digital documents, and text messages without proper judicial oversight.<sup>1</sup> As a result, public confidence in technology has been badly damaged. Polls consistently show that consumers believe that their electronic information is sensitive – and that current laws provide inadequate protection from government monitoring.<sup>2</sup> Companies in turn are increasingly concerned about loss of consumer trust and its business impact.

Courts and legislatures around the country are recognizing the need to update privacy laws for the modern digital age. In two recent decisions, *United States v. Jones* and *Riley*

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<sup>1</sup> For example, Google's transparency report shows a 250% jump demands from U.S. law enforcement in just the past five years, including 32,000 requests in the first 6 months of 2014 alone.

<sup>2</sup> According to a recent Pew Internet & Society survey, 80% of adults feel that Americans are rightly concerned about government monitoring of internet communications, 70% of social networking site users express concern about government access, and 75% or more believe that their email messages, text messages, and location information are sensitive.



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*v. California*, the U.S. Supreme Court upheld Fourth Amendment privacy rights against warrantless government surveillance. Justice Alito in *Jones* also urged lawmakers to take action, noting that in circumstances involving dramatic technological change “a legislative body is well suited to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.”

15 state legislatures throughout the country have already heeded Justice Alito’s call and enacted new legislation, with 9 states safeguarding location information<sup>3</sup> and 5 states protecting electronic communications content.<sup>4</sup> The White House has called on lawmakers to update the law to “ensure the standard of protection for online, digital content is consistent with that afforded in the physical world.” Further, a federal bill garnered over 270 bipartisan cosponsors in the United States Congress. California has fallen behind states as diverse as Texas, Maine, and Utah which have already enacted legislation to safeguard rights, spur innovation, and support public safety.

Accordingly, we thank you for introducing this important legislation and we are happy to support it during this legislative session.

Sincerely,

Shannon P. Minter  
Legal Director

<sup>3</sup> IN H.B. 1009 (2014); IL S.B. 2808 (2013); MD S.B. 698 (2013); ME S.P. 157 (2013); MN S.F. 2466 (2014); MT H.B. 603 (2013); TN S.B. 2087 (2013); UT H.B. 128 (2014); WI A.B. 536 (2013).

<sup>4</sup> HI H.B. 1641 (2013); MD S.B. 698 (2013); ME S.P. 484 (2013); TX H.B. 2268 (2013); UT H.B. 128 (2014).